

Examiner's Amendment

1. An extension of time under 37 CFR 1.136(a) is required in order to make an examiner's amendment that places this application in condition for allowance. During a telephone conversation conducted on 19 February 2008, Robert Hanson requested an extension of time for 1 MONTH(S) and authorized the Commissioner to charge Deposit Account No 19-3140/DEKA:328US. The required fee of \$330 for this extension and authorized the following examiner's amendment. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

IN THE CLAIMS:

10. (Currently amended) A corn plant of corn variety I071535, further comprising a nuclear or cytoplasmic gene conferring male sterility introduced by genetic transformation or single gene conversion, wherein a sample of the seed of the corn variety I071535 was deposited under ATCC Accession No. - - - -.

In claim 20, in line 7 of part (e), "comprising" was deleted

In claim 25, line 12, "a" was replaced with --the--.

REQUIREMENT OF ALLOWANCE UNDER 37 CFR §§ 1.801-1.809

2. The Deposit Statement filed 10 July 2007 is deemed in accordance with 37 CFR §§ 1.801-1.809. Therefore, no 35 USC § 112, first paragraph rejection has been maintained even though it is apparent that I0771535 corn seed is essential to the claimed invention and that the deposit is necessary for an adequate written description and enablement for the claimed invention.

Since the application is otherwise in condition for allowance except for the needed deposit of I0771535 seed and since the Office has received written assurance that an acceptable deposit will be made on or before payment of the issue fee, the Office is authorized to mail Applicant a Notice of Allowance and Issue Fee Due together with a requirement that the needed deposit be made within THREE (3) MONTHS of the mail date of this letter (see 37 CFR § 1.809(c)).

Under 37 CFR § 1.809(c)(d) an applicant is required to make a deposit of seed within three months after the mailing date of the Notice Of Allowance and Issue Fee Due. The period for satisfying this requirement is extendible under ' 1.136, however, failure to make the needed deposit of seeds of 925847 will result in abandonment of the application for failure to prosecute. The deposit statement in the specification, and all claims which refer to the instant seeds by name, must be amended to include the deposit accession number. In the instant application claim 1 must be amended to recite the deposit accession number. These amendments should be submitted before the payment of the issue fee as an Amendment After Allowance under 37 CFR § 1.312. If the amendment is received after the payment of the issue fee the same should be made under the provisions of 37 CFR § 1.312(a) and a petition filed under 37 CFR § 1.183 to waive the requirement of 37 CFR § 1.312 that the amendment be filed before or with payment of the issue fee, that is, it must be accompanied by a fee in accordance with 37 CFR § 1.17(i) and a petition which includes "a showing of good and sufficient reasons why the amendment is necessary and was not earlier presented and why justice requires waiver of the rule". Finally, the statement of deposit in the specification shall contain:

- (1) The accession number for the deposit(s);
- (2) The date of the deposit(s);
- (3) A description of the deposited biological material sufficient to specifically identify and to permit examination; and

- (4) The name and address of the depository (see 37 CFR § 1.809(d)).

Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anne R. Kubelik, whose telephone number is (571) 272-0801. The examiner can normally be reached Monday through Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg, can be reached at (571) 272-0975.

The central fax number for official correspondence is (571) 273-8300.

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Anne Kubelik, Ph.D.
March 20, 2008

/Anne R. Kubelik/
Primary Examiner, Art Unit 1638